

EXHIBIT 12

REDACTED
IN ITS
ENTIRETY

EXHIBIT 13

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San Francisco, California 94111

17 Tel: +1-415-362-6666

18 Attorneys for Defendants DISH Network
Corporation and DISH Network L.L.C.

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA

21 FOX BROADCASTING COMPANY,
22 INC., TWENTIETH CENTURY FOX
23 FILM CORP., and FOX TELEVISION
HOLDINGS, INC.,

24 Plaintiffs,

25 v.

26 DISH NETWORK L.L.C. and DISH
27 NETWORK CORP.,

28 Defendants.

Case No. CV12-04529 DMG (SHx)

**DECLARATION OF IAN SAFFER
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: September 21, 2012

Time: 9:30 a.m.

Ctrm: 7 (2nd Floor)

1 I, Ian Saffer, declare:

2 1. I am an attorney with the firm Kilpatrick Townsend & Stockton LLP.
3 I am outside trademark counsel to DISH Network L.L.C. and DISH Network Corp.
4 (“DISH”). This declaration is based on my personal knowledge. I can testify about
5 the facts stated competently if called upon to do so.

6 2. I am informed and have verified through U.S. Patent and Trademark
7 Office (“PTO”) records that on February 4, 2011 DISH filed trademark applications
8 for the mark PRIMETIME ANYTIME. The applications were filed on an Intent to
9 Use (“ITU”) basis and I understand that DISH had not at the time of filing offered
10 goods or services to its subscribers under that mark. I am informed and understand
11 that the launch of goods and services under that mark did not occur until over a year
12 later—in March 2012. Two trademark applications were filed on February 4, 2011,
13 one for goods in International Class 9 and one for services in International Class 38.
14 True and correct copies of printouts of the applications from the PTO’s TDR
15 Document Viewer are attached hereto as **Exhibit 1**.

16 3. It is customary in my practice when filing ITU applications to include
17 the broadest possible description of goods and services that is consistent with the
18 client’s bona fide intention to use the mark. This is particularly true with ITU
19 applications when the business plans for the marks are not finalized. Further, with
20 cutting edge technology, a generally-accepted way to describe certain goods and
21 services may not exist. I am informed by DISH that it was DISH’s practice as well
22 to include the broadest description of goods and services that is consistent with its
23 bona fide intention to use the mark.

24 4. On August 30, 2012, I submitted to the PTO on behalf of DISH a
25 request to amend the description of services to remove “Broadcasting services and
26 provision of telecommunications access to films and television programs provided
27 via a video-on-demand services; Internet protocol television (IPTV) transmission
28 services,” from the International Class 38 description since the signatory on the

1 August 9, 2012 Statement of Use for that application recently was informed of
2 specific connotations these phrases have in the industry. Attached hereto as
3 **Exhibit 2** is a true and correct copy of the email sent to the PTO Examiner
4 requesting amendment of that description. Attached hereto as **Exhibit 3** is a true
5 and correct copy of the Examiner's amendment to the PRIMETIME ANYTIME
6 application in International Class 38 entering the requested amendment.

7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct.

9 Executed this 31st day of August, 2012, at Denver, CO.

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12 
13 _____
14 Ian Saffer
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Exhibit 1

PTO Form 1478 (Rev 9/2006)
DMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85234298

Filing Date: 02/04/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85234298
MARK INFORMATION	
*MARK	Primetime Anytime
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Primetime Anytime
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	DISH Network L.L.C.
*STREET	9601 S. Meridian Blvd
*CITY	Englewood
*STATE (Required for U.S. applicants)	Colorado
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	80112
PHONE	303 723 1616
FAX	303 723 2588
EMAIL ADDRESS	ipdept@dishnetwork.com
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY	

ORGANIZED	Colorado
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	digital video recorders; Electronic apparatus and devices for controlling access to pay-television services; Communications equipment, namely, signal frequency receivers; television receivers; video, and data distribution systems, namely, for transmitting audio, video, and data signals from a receiver to television system client devices; communications equipment, namely, set-top-boxes for receiving video programming; satellite receivers;
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Max S. Gratton
ATTORNEY DOCKET NUMBER	T2011-02-01
FIRM NAME	DISH Network L.L.C.
STREET	9601 S. Meridian Blvd.
CITY	Englewood
STATE	Colorado
COUNTRY	United States
ZIP/POSTAL CODE	80112
PHONE	303 723 1616
FAX	303 723 2588
EMAIL ADDRESS	ipdept@dishnetwork.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	John T. Kennedy, Benjamin Roberts
CORRESPONDENCE INFORMATION	
NAME	Max S. Gratton
FIRM NAME	DISH Network L.L.C.
STREET	9601 S. Meridian Blvd.
CITY	Englewood

STATE	Colorado
COUNTRY	United States
ZIP/POSTAL CODE	80112
PHONE	303 723 1616
FAX	303 723 2588
EMAIL ADDRESS	ipdept@dishnetwork.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Max S. Gratton/
SIGNATORY'S NAME	Max S Gratton
SIGNATORY'S POSITION	Attorney of record, Colorado bar member
DATE SIGNED	02/04/2011

P.O. (Unit 1413) (Rev. 8/2006)
USMB No. 0651-0019 (Exp. 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85234298

Filing Date: 02/04/2011

To the Commissioner for Trademarks:

MARK: Primetime Anytime (Standard Characters, see mark)

The literal element of the mark consists of Primetime Anytime.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, DISH Network L.L.C., a limited liability company legally organized under the laws of Colorado, having an address of

9601 S. Meridian Blvd

Englewood, Colorado 80112

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: digital video recorders; Electronic apparatus and devices for controlling access to pay-television services; Communications equipment, namely, signal frequency receivers; television receivers; video, and data distribution systems, namely, for transmitting audio, video, and data signals from a receiver to television system client devices; communications equipment, namely, set-top-boxes for receiving video programming; satellite receivers;

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Max S. Gratton and John T. Kennedy, Benjamin Roberts of DISH Network L.L.C.

9601 S. Meridian Blvd.

Englewood, Colorado 80112

United States

The attorney docket/reference number is T2011-02-01.

The applicant's current Correspondence Information:

Max S. Gratton

DISH Network L.L.C.

9601 S. Meridian Blvd.

Englewood, Colorado 80112

303 723 1616(phone)

303 723 2588(fax)

ipdept@dishnetwork.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Max S. Gratton/ Date Signed: 02/04/2011
Signatory's Name: Max S Gratton
Signatory's Position: Attorney of record, Colorado bar member

RAM Sale Number: 177
RAM Accounting Date: 02/07/2011

Serial Number: 85234298
Internet Transmission Date: Fri Feb 04 13:55:50 EST 2011
TEAS Stamp: USPTO/BAS-204.76.128.217-201102041355503
01105-85234298-4807ecf97f11880aa31bcb42a
647f8dba-DA-177-20110204134248529307

Primetime Anytime

PTO Form 1479 (Rev 9/2006)
 DMB No. 0651-0009 (Exp 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85234304

Filing Date: 02/04/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85234304
MARK INFORMATION	
*MARK	Primetime Anytime
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Primetime Anytime
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	DISH Network L.L.C.
*STREET	9601 S. Meridian Blvd
*CITY	Englewood
*STATE (Required for U.S. applicants)	Colorado
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	80112
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Colorado
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	038

*IDENTIFICATION	Rental of set-top boxes for use with televisions; Satellite transmission services; Television transmission services; Transmission of radio and television programs by satellite; Broadcasting services and provision of telecommunication access to films and television programs provided via a video-on-demand service; Internet protocol television (IPTV) transmission services
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Max S. Gratton
ATTORNEY DOCKET NUMBER	T2011-02-02
FIRM NAME	DISH Network L.L.C.
STREET	9601 S. Meridian Blvd
CITY	Englewood
STATE	Colorado
COUNTRY	United States
ZIP/POSTAL CODE	80112
PHONE	303 723 1616
FAX	303 723 2588
EMAIL ADDRESS	ipdept@dishnetwork.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	John T. Kennedy, Benjamin Roberts
CORRESPONDENCE INFORMATION	
NAME	Max S. Gratton
FIRM NAME	DISH Network L.L.C.
STREET	9601 S. Meridian Blvd
CITY	Englewood
STATE	Colorado
COUNTRY	United States
ZIP/POSTAL CODE	80112
PHONE	303 723 1616
FAX	303 723 2588

EMAIL ADDRESS	ipdept@dishnetwork.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Max S. Gratton/
SIGNATORY'S NAME	Max S Gratton
SIGNATORY'S POSITION	Attorney of Record, Colorado bar member
DATE SIGNED	02/04/2011

PTO (Form 1417) (Rev. 8/2006)
OMB No. 0551-0047 (Exp. 12/31/2011)

Trademark/Service Mark Application, Principal Register

Serial Number: 85234304

Filing Date: 02/04/2011

To the Commissioner for Trademarks:

MARK: Primetime Anytime (Standard Characters, see mark)

The literal element of the mark consists of Primetime Anytime.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, DISH Network L.L.C., a limited liability company legally organized under the laws of Colorado, having an address of

9601 S. Meridian Blvd
Englewood, Colorado 80112
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 038: Rental of set-top boxes for use with televisions; Satellite transmission services; Television transmission services; Transmission of radio and television programs by satellite; Broadcasting services and provision of telecommunication access to films and television programs provided via a video-on-demand service; Internet protocol television (IPTV) transmission services

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Max S. Gratton and John T. Kennedy, Benjamin Roberts of DISH Network L.L.C.
9601 S. Meridian Blvd
Englewood, Colorado 80112
United States

The attorney docket/reference number is T2011-02-02.

The applicant's current Correspondence Information:

Max S. Gratton
DISH Network L.L.C.
9601 S. Meridian Blvd
Englewood, Colorado 80112
303 723 1616(phone)
303 723 2588(fax)
ipdept@dishnetwork.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Max S. Gratton/ Date Signed: 02/04/2011
Signatory's Name: Max S Gratton
Signatory's Position: Attorney of Record, Colorado bar member

RAM Sale Number: 241
RAM Accounting Date: 02/07/2011

Serial Number: 85234304
Internet Transmission Date: Fri Feb 04 14:01:07 EST 2011
TEAS Stamp: USPTO/BAS-204.76.128.217-201102041401074
21544-85234304-480d97d3fd185113caace191a
e96179c6d7-DA-241-20110204135630394297

Primetime Anytime

Exhibit 2

From: Saffer, Ian [isaffer@kilpatricktownsend.com]
Sent: Thursday, August 30, 2012 12:38 PM
To: Baker, Jordan
Subject: RE: App. Serial No. 85234304 - PRIMETIME ANYTIME in Class 38

Thanks very much.

Ian

Ian Saffer
Kilpatrick Townsend & Stockton LLP
Suite 600 | 1400 Wewatta Street | Denver, CO 80202
office 303 607 3211 | fax 303 736 3947
isaffer@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

From: Baker, Jordan [mailto:jordan.baker@USPTO.GOV]
Sent: Thursday, August 30, 2012 1:38 PM
To: Saffer, Ian
Subject: RE: App. Serial No. 85234304 - PRIMETIME ANYTIME in Class 38

Dear Mr. Saffer,

Thank you for the note. I will make the change by Examiner's Amendment and re-approve the file for registration.

Kind regards,

Jordan A. Baker
Trademark Examining Attorney
United States Patent and Trademark Office
Law Office 102
571-272-8844
jordan.baker@uspto.gov

From: Saffer, Ian [mailto:isaffer@kilpatricktownsend.com]
Sent: Thursday, August 30, 2012 3:32 PM
To: Baker, Jordan
Subject: App. Serial No. 85234304 - PRIMETIME ANYTIME in Class 38

App. Serial No. 85234304 - PRIMETIME ANYTIME in Class 38

Mr. Baker,

I write regarding the above-referenced application. The Applicant would like to delete the following from the services description: "Broadcasting services and provision of telecommunication access to films and television programs provided via a video-on-demand service; Internet protocol television (IPTV) transmission services." The signatory on the August 9, 2012 Statement of Use recently was informed of specific connotations those phrases have in the industry and that it would be more accurate to remove them. I understand you can make this deletion via Examiner's Amendment. After this deletion, the services description would be as follows:

Rental of set-top boxes for use with televisions; Satellite transmission services; Television transmission services; Transmission of radio and television programs by satellite.

Please proceed with the Examiner's Amendment or call or email with any comments or questions. Thank you for your assistance. Sincerely,

Ian



Ian Saffer

Kilpatrick Townsend & Stockton LLP

Suite 600 | 1400 Wewatta Street | Denver, CO 80202

office 303 607 3211 | fax 303 736 3947

isaffer@kilpatricktownsend.com | [My Profile](#) | [vCard](#)

Confidentiality Notice:

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*****DISCLAIMER***** Per Treasury Department Circular 230: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Exhibit 3

To: DISH Network L.L.C. (denverteas@kilpatricktownsend.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85234304 - PRIMETIME ANYTIME - N/A
Sent: 8/30/2012 3:40:40 PM
Sent As: ECOM102@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85234304

MARK: PRIMETIME ANYTIME

85234304

CORRESPONDENT ADDRESS:

Ian L. Saffer
Kilpatrick Townsend & Stockton LLP
1400 Wewatta Street, Suite 600
Denver CO 80202

GENERAL TRADEMARK INFORMATION
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: DISH Network L.L.C.

CORRESPONDENT'S REFERENCE/DOCKET NO :
N/A

CORRESPONDENT E-MAIL ADDRESS:
denverteas@kilpatricktownsend.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 8/30/2012

APPLICATION HAS BEEN AMENDED: In accordance with the authorization granted by Ian Saffer on August 30, 2012, the trademark examining attorney has amended the application as indicated below. Please advise the undersigned immediately of any objections. Otherwise, no response is necessary. TMEP §707. Any amendments to the identification of goods and/or services may clarify or limit the goods and/or services, but may not add to or broaden the scope of the goods and/or services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*

Amendment to Identification of Services

The identification of services is amended to read as follows: "Rental of set-top boxes for use with televisions; Satellite transmission services; Television transmission services; Transmission of radio and television programs by satellite", in Class 38. *See* TMEP §§1402.01, 1402.01(e).

/Jordan A. Baker/
Trademark Examining Attorney
Law Office 102
571-272-8844
jordan.baker@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

To: DISH Network L.L.C. (denverteas@kilpatricktownsend.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85234304 - PRIMETIME ANYTIME - N/A
Sent: 8/30/2012 3:40:40 PM
Sent As: ECOM102@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION

**USPTO LETTER (AN OFFICE ACTION) HAS ISSUED ON 8/30/2012
FOR**

SERIAL NO. 85234304

Please follow the instructions below:

TO READ OFFICE LETTER: Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office letter

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

HELP: For *technical* assistance in accessing the Office correspondence, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office letter.